



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 18, 1997

Ms. Lan P. Nguyen  
Assistant City Attorney  
City of Houston  
Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR97-2785

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111399.

The City of Houston (the "city") received a request for information concerning the employment of a named individual. You state that the city will make "a significant portion" of the requested information available to the requestor. You claim, however, that the remaining requested information is excepted from disclosure under sections 552.103, 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information

at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you have shown that the city is currently involved in pending litigation, *Gutierrez v. City of Houston*, No. H-97-2186 (S.D. Tex., Filed June 27, 1997). After reviewing the submitted material, we conclude that litigation is pending and that the submitted documents relate to the litigation. The city may, therefore, withhold the requested documents.<sup>1</sup>

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a). Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).<sup>2</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch  
Assistant Attorney General  
Open Records Division

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<sup>1</sup>We note that in Open Records Letter No. 97-2076 (1997), our office addressed the release of information pursuant to a request by another individual. In that ruling, we concluded that the requested information related to a pending lawsuit, *Gutierrez v. City of Houston*, No. 97-22132 (280th Judicial District Court, Harris County, Texas).

<sup>2</sup>Because we are able to make a determination under section 552.103, we do not address your work product argument under section 552.111 or your argument under section 552.107. If you receive a request for these records once the litigation has concluded, you should re-assert your arguments against disclosure at that time.

VDP/alg

Ref.: ID# 111399

Enclosures: Submitted documents

cc: Mr. Lloyd E. Kelley  
2812 Norhill  
Houston, Texas 77008  
(w/o enclosures)